

CONFLICT OF INTEREST OPINION
NO. EC-COI-83-71

FACTS:

You are the Executive Director of ABC, which operates a twenty-four-hour-per day group residence for post-institutional clients. The residence program is funded pursuant to a contract with the Commonwealth Department of Mental Health, and ABC provides housing, meals and staff support to the clients under that contract.

QUESTION:

Does the group residence home operated by ABC qualify as an appropriate facility at which full-time state employees may be employed after hours and be paid pursuant to a contract with the Commonwealth.

ANSWER:

Yes.

DISCUSSION:

Prior to 1983, the Commission had consistently advised state employees, vendors to state agencies and the state agencies themselves that G. L. c. 268A prohibited full-time state employees (whether from DMH or other state agencies) from being paid after hours by vendors under contracts funded by the Commonwealth. See, State Ethics Commission Compliance Letter 81-21, (July 29, 1981); EC-COI-8;-141 Attorney General Conflict Opinion No. 798. The basis for these rulings was that § 7 prohibited full-time state employees from having a financial interest in a contract made by a state agency.

During the 1982 legislative session, the General Court considered proposals designed to ease the scope of the § 7 prohibition, in, or have official responsibility for, the particularly with respect to second contracts with state vendors which customarily had difficulty staffing social services programs run on a twenty-four hour per day basis. As a result the General Court enacted St. 1982, c. 612, § 7 (effective March 29, 1983) which added the following new exemption to § 7:

This section shall not prohibit a state employee from being employed on a part-time basis by a facility operated or designed for mental health care, public health, correctional facility or any other facility principally funded by the state which provides similar services and which operates on a uninterrupted and continuous basis; provided that such employee does not participate in or have official responsibility for, the financial management of such facility, that he is compensated for such part-time employment for not more than four hours in any day in which he is otherwise compensated by the

commonwealth, and at a rate which does not exceed that of a state employee classified in step one of job group XX of the general salary schedule contained in section forty-six of chapter thirty.

The Commission concludes that the group residence home operated by ABC constitutes a “facility principally funded by the state which provides similar services and which operates on an uninterrupted and continuous basis . . .” This conclusion is based on the fact that the major funding source for the home is DMH, the house, meal and staff support services provided by ABC are similar to those provided by state facilities designed for mental health care, and the program operates on an uninterrupted, twenty-four-hour per day basis. Accordingly, state employees may work after hours at the ABC group residence home, provided that they satisfy the other conditions under the exemption.

DATE AUTHORIZED: May 5, 1983